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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, **Plaintiff,** **VS.** **HECTOR GUILLERMO FARIAS-BECERRA (1) ;ROXANNA TIZNADO-NAVARRETE (2),** **Defendants.**	**Case No. 07CR3179-W** **AMENDED SENTENCING MEMORANDUM ON BEHALF OF DEFENDANT HECTOR GUILLERMO FARIAS-BECERRA** **DATE: April 22, 2008** **TIME: 9:00 a.m.**

Defendant, Hector Guillermo Farias-Becerra hereby files an Amended Sentencing Memorandum. In the original Sentencing Memorandum filed on behalf of Mr. Farias-Becerra on February 19, 2008, defendant did not request a Downward Adjustment for Role, a Downward Departure for Aberrant Behavior, or a Downward Departure for a Combination of Factors.

Defendant now makes the request for an additional Two Levels of Sentencing consideration under any or all of the above Adjustment or Departure categories. The Probation Officer has calculated Mr. Farias-Becerra as being at a Resulting Offense Level 13, Criminal History Category I, with a resulting Guideline Range of 12 to 18 months. The

Probation Officer noted that he believed there were more mitigating than aggravating factors concerning Mr. Farias-Becerra, and made a low-end Recommendation of twelve months custody. The original Sentencing Summary Chart filed on behalf of Mr. Farias-Becerra arrived at the same Resulting Offense Level and Sentencing Guideline Range, and recommended a twelve month and one day sentence.

Defendant now makes the request for consideration of an additional Two Level Downward Adjustment or Departure in order to arrive at a Resulting Offense Level of 11, and a Sentencing Guideline Range of 8 to 14 months. The Primary basis for this supplemental request for consideration of a lower Resulting Offense Level and Guideline Range is the hope to avoid an unwarranted sentencing disparity between the two defendants in this case. Defense counsel notes that Co-Defendant Tiznado received an eight month sentence. Counsel for Tiznado argued that she was youthful (19 years old), that she had never before been convicted of a crime, and that she was the victim of her own "youthful inability to anticipate the consequences of her decisions". Her attorney further argued that she had learned her lesson.

The same factors argued on behalf of Defendant Tiznado are applicable to Mr. Farias-Becerra. He also is youthful (age 20), is in Criminal History Category I, and was subject to the same youthful inability to anticipate the consequences of his decisions. There is, however, a big difference between these two defendants that operates entirely in favor of Mr. Farias-Becerra. The Probation Officer reported no prior law enforcement contacts of any nature whatsoever as to Mr. Farias-Becerra. This is not true as to the "youthful and naïve" Ms. Tiznado. Her "youthful" record of law enforcement contact included three prior "apprehensions" while attempting to smuggle undocumented aliens into the United States

(11/28/04, 8/25/07, and 10/13/07). Thus it is perfectly clear that Ms. Tiznado had actually been in the business of alien smuggling since she was indeed very youthful. Mr. Farias-Becerra has no such history.

Again, the primary focus of this Amended Sentencing Memorandum is to address the issue of avoiding a significant sentencing disparity. The fact that Mr. Farias-Becerra was the driver in this particular incident is outweighed in terms of any greater culpability than defendant Tiznado, by virtue of the fact that Mr. Farias-Becerra had no prior record of law enforcement contact, while Ms. Tiznado had three prior alien smuggling apprehensions. If Ms. Tiznado is deserving of a Two Level Downward Adjustment, notwithstanding her history of involvement in alien smuggling (albeit not a conviction), Mr. Farias-Becerra is deserving of consideration of the same sentence. Given the facts of this case and these two defendants, it would indeed be a disparate sentence for Mr. Farias-Becerra to receive anything greater than the eight month sentence imposed on Ms. Tiznado. Mr. Farias-Becerra was the driver in this instance, but that factor is outweighed (as stated) by the alien smuggling apprehension history of Ms. Tiznado. In fact, it is frequently the case that the passenger is more deeply involved in alien smuggling than the driver who has been recruited to fulfill that riskier position. Many times the passenger escapes prosecution, while the driver, having been informed by the recruiter that alien smuggling is not considered to be a serious offense, takes the fall. In view of her past history, it is entirely likely that Ms. Tiznado was providing instructions to Mr. Farias-Becerra.

In the interest of fairness and equity, and with an eye to avoiding disparity of sentencing as to similarly situated defendants, it is respectfully submitted that Mr. Farias-Becerra merits a Two Level Downward Adjustment for Minor Role and an eight month sentence. The same result can be accomplished by either an Aberrant Behavior Downward Departure (a no criminal history in Mexico official certification letter was filed with the Court on 2/20/08), or by virtue of a Combination of Factors Downward Departure (the Probation Officer notes that there are more mitigating than aggravating factors applicable to Mr. Farias-Becerra). Lastly, since the Guidelines are advisory only, the Court has unlimited discretion to fashion a sentence which avoids unwarranted disparity between the sentences of co-defendant Tiznado and Mr. Farias-Becerra.

Respectfully Submitted,

s/Donald A. Nunn_______________________
Donald A. Nunn,
Attorney for Defendant Hector Guillermo Farias-Becerra

DATED: March 31, 2008

CERTIFICATE OF SERVICE

I, Donald A. Nunn declare that:

I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to this action; and I am employed in the County of San Diego, California. My business address is 13426 Community Road. Poway, California.

I caused to be served by electronic mail on March 31, 2008:

AMENDED SENTENCING MEMORANDUM

to the following:

- **Gregory Murphy**
  gregory_murphy@fd.org,cori_cardona@fd.org
- **U S Attorney CR**
  Efile.dkt.gc2@usdoj.gov

_____s/Donald A. Nunn______________________
Donald A. Nunn,
Attorney for Defendant Hector Guillermo Farias-Becerra